

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 10701 of 2006

Date of Decision: Nov. 21,2006

Gurcharan Singh and another Petitioners

Versus

State of Punjab and another Respondents

**Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mrs. Justice Nirmal Yadav**

Present: Mr. J.S.Bhandohal, Advocate
for the petitioners.

Mr. C.M..Munjal, Sr. Addl. A.G. Punjab,
for respondent No.1.

Mr. H.S.Dhandi, Advocate
for respondent No.2.

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ASHUTOSH MOHUNTA, J. (Oral)

The petitioners have impugned the orders Annexures P1 and P2 by which they have been held to be in unauthorized occupation of land which is part of a Pond belonging to the Gram Panchayat.

The only point raised by the counsel for the petitioners is that as they have raised a question of title by filing a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'), therefore, by virtue of proviso to Section 7(1) of the Act as long as the question of title is not determined the application with regard to their eviction under Section 7(2) of the Act has to be kept pending.

On the other hand, counsel for the respondent has contended that not only the application under Section 7(2) of the Act filed by the Gram Panchayat has been allowed by the Collector but even the appeal filed by the petitioners before the Commissioner has been dismissed. It is submitted that the petitioners have filed a petition under Section 11 of the Act after the

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decision of the Appellate Court and, therefore, the petitioners are not entitled to claim protection under proviso to Section 7(1) of the Act.

After hearing the arguments of both the sides, it is clear that the petitioners did not raise any plea with regard to title when the application under Section 7(2) of the Act was filed by the Gram Panchayat. The application was decided by the Collector vide order Annexure P-2. Thereafter, the petitioners also filed an appeal before the Commissioner but there also the petitioners did not raise the question of title. The appeal filed by the petitioners has been dismissed by the Commissioner vide order Annexure- P1. The language of proviso to Section 7(1) of the Act clearly postulates that in case the question of title is raised then the application shall remain pending. In the present case, not only the application under Section 7(2) of the Act has been decided but even the appeal filed by the petitioners has been dismissed. Thus, proviso to Section 7(1) of the Act cannot come to the aid of the petitioners.

In view of the above, we find no merit in the present writ petition and the same is dismissed.

**(ASHUTOSH MOHUNTA)
JUDGE**

21.11.2006
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**(NIRMAL YADAV)
JUDGE**